SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Maimuma Banu

C.A. No. 3301 of 2002

(S. N. Variava and A. Pasayat JJ.)

05.08.2003

JUDGEMENT

Arijit Pasayat, J.

1. The only point involved in these cluster of appeals is whether the High Court of Bombay was justified in directing payment of interest on rental compensation awarded to persons whose lands were acquired under the *Land Acquisition Act, 1894* (in short the 'Act').

2. Factual matrix giving rise to these appeals is almost undisputed except that the dates in regard to the Notifications issued under Ss. 4 and 6 of the Act are different. Lands of the respondents were acquired by the appellant-State by private negotiations and accordingly possession was taken prior to issuance of Notification under S. 4 of the Act. Subsequently, Notification under S. 6 of the Act was also issued. The Land Acquisition Officer fixed the compensation payable and the statutory entitlements. The State of Maharashtra by several resolutions and instructions contained in Circulars dated 1-12-1972, 17-9-1977, 2-4-1979 and 24-3-1988 provided for rental compensation payable to title holders of lands. The resolutions in question, inter alia, provided that where possession of lands is taken by private negotiations a certain percentage of the estimated value of the land was to be paid as rental compensation. It was also indicated that prompt payment of such compensation should be done.

3. The land owners approached the High Court by filing writ petitions making a grievance that after taking possession of the land no rental compensation was either being paid, or, there was abnormal and unusual delay in making payment thereof. They claim interest for such delayed payment. The High Court by impugned judgment held that the non-payment of rental compensation within the time prescriptions indicated in the resolutions amounted to deprivation of valuable property without due payment therefor. It was directed that State authorities have to pay the compensation and interest thereon at the rates prescribed in the Government resolution dated 24th March, 1988 and the payment was to be released as expeditiously as possible but in no case beyond the period of six months from the date of judgment by the Collector concerned. It was held that land owners will be entitled to raise

demand of rental compensation as well as the interest thereon before the Collector when the award under S. 11 of the Act is passed or before the Reference Court, as the case may be. In case the concerned owner has not been paid 80% of the compensation as calculated by the Collector while taking possession of the land without issuing notice under S. 4(1) of the Act, the Government was directed to review its policy for higher rate of rental compensation as well as interest thereon in the light of provisions contained in Ss. 17(3-A), 23(1-A) and 28 of the Act. The rate of interest was stipulated to be 12% on the rental compensation amount. The High Court with reference to various resolutions noted above accepted the prayer and directed as noted above.

4. In support of the appeals, learned counsel for the appellant-State and its functionaries submitted that there was no question of granting any interest on the rental compensation. The High Court clearly erred in relying on provisions like S. 17(3-A) or 23(1-A) to grant interest by analogy. There is no statutory entitlement for any rental compensation. But with a view to eliminate difficulties of the land owners whose claims get locked up in the litigation and with a sense of benevolence, the novel concept of rental compensation was introduced by the State. When there is no statutory entitlement, the question of granting any interest does not arise. It is pointed out that in most of the cases payment of the rental compensation has been made. It is also submitted that when there is no statutory liability there is no question of paying any interest on assumed equitable grounds. The rate of 12% it is submitted is clearly without any basis and cut off date fixed whereafter the interest starts running is without any rationale. The claim for interest has been made after unusually long periods, and the High Court should have thrown out the writ petitions on the ground of delay and laches.

5. Per contra, learned counsel for the respondents submitted that the true essence of the resolutions and the purpose for which rental compensation was granted is sought to be overlooked on the technical plea that the amount of rental compensation is not under the Act. Even if it is not under the Act, the spirit behind statutory prescriptions under Ss. 17(3-A) and 23(1-A) read with S. 28 of the Act cannot be lost sight of. It was submitted that the decisions relied upon by the High Court in *Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa and others*[1] *and Executive Engineer, Irrigation Division v. Laghubhai Nanubhai and others*[2] clearly indicate the logic of the claim made by the land owners and accepted by the High Court. The High Court took note of the fact that in some cases interest has been granted and, therefore, a departure cannot be made in respect of the present respondents.

6. It was pointed out by learned counsel for the appellants that there was no resolution adopted for granting interest and even if in some cases interest has been held to be payable by a person whose competence to give such direction is not free from doubt, the land owners cannot lay claims for amounts which are not statutorily payable to them. Merely because in single case or two interest was directed to be paid, it has no binding force.

7. It is to be noted that the resolutions adopted by the Government were intended to benefit the land owners whose lands were acquired. To avoid unnecessary delays in payment urgency for follow up action was indicated in the resolutions. To that extent, learned counsel for the land owners are on terra firma. But legally the land owners are not entitled to any

interest. There is no provision either in the resolutions or in the statutes concerned which entitles the land owners to payment of interest. Whatever is statutorily payable has been clearly indicated in the Act itself. Section 23(1-A) of the Act was introduced by Amendment Act of 1984. There is no dispute, and in our opinion rightly that rental compensation is not relatable to the Act. The entitlement of the claimants is on the basis of Governments' resolutions i.e. on the basis of executive orders.

8. It is crystal clear from a bare reading of the provisions of the Act that it does not provide for payment of any rental compensation. Therefore, the appellants are correct in their stand to the extent that the liability for rental compensation does not have its source under the Act. Therefore, the logic of Ss. 17(3-A), 23(1-A), S. 28 of the Act and S. 34 has no application in law to rental compensation. That being the position, the High Court was not justified in relying on Ss. 17(3-A), 23(1-A) or S. 28 of the Act to grant interest.

9. But the problem does not end there. Admittedly, the possession of land was taken long years back. Thereafter, the land owner does not practically possess any right over the land in question except to the compensation as statutorily provided for. But it would be illogical and improper to turn Nelson's eye to the factual position as highlighted by the respondents. It is not in dispute that in most of the cases the rental compensation has not been paid. If that factual position continues it clearly is a case where the amount to which a person is entitled is withheld without any legitimate excuse. Learned counsel for the appellants strenuously urged that in most of the cases the proceedings have not yet attained finality and are pending either before reference Court or in appeal. That does not provide a legitimate excuse to the appellants to withhold payment of the rental compensation. The amount calculated on the basis of award by the Land Acquisition Officer cannot be below than the amount to be ultimately fixed. If in appeal or the reference proceeding, there is any variation, the same can be duly taken note of as provided in law. There is no difficulty and we find none as to why the compensation on the basis of value determined by the Land Acquisition Officer cannot be paid. If there is upward revision of the amount, the consequences will follow and if necessary re-determination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. If however the Land Acquisition Officer's award is maintained then nothing further may be required to be done. In either event, payment of the rental compensation expeditiously would be an appropriate step. Looking at the problem from another perspective, one thing is clear that authorities have clearly ignored the sense of urgency highlighted in the various resolutions.

10. The crucial question is whether there can be any direction for interest on rental compensation once it is held that the same has to be paid within the time frame, notwithstanding the fact that there is no statutory obligation.

11. It is not in dispute that in certain cases payments have already been made. Though the inevitable conclusion is that the High Court is not justified in directing grant of interest on the logic of various provisions contained in the Act, yet there is an element of equity in favour of the land owners. It is, however, seen that the writ applications were filed long after the possession was taken. This factor cannot be lost sight of while working out the equities. It

would therefore be appropriate if appellants pay interest @6% from 1-4-2000 till amounts payable as rental compensation are paid to the concerned land owners. This direction shall not apply to those cases where the payments have already been made prior to 1-4-2000. Appeals are allowed to the extent indicated without any stipulation of costs.

Order accordingly.

[1]*(1995 (6) SCC 355)*
[2]*(1995 Supp.4 SCC 583)*